IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 5TH JULY 2007 / 14TH ASHADHA 1929

WP(C).No. 4673 of 2004(F)

PETITIONERS:
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1. MANEKSH P.S., TECHNICIAN GRADE I,
MODEL POLY TECHNIC, KARUNAGAPPALLY.

2. SYLISH S.V., TECHNICIAN GRADE I,
COLLEGE OF APPLIED SCIENCES, MAVELIKKARA.

BY ADV. SRI.NAGARAJ NARAYANAN
SRI.NAIR AJAY KRISHNAN
SRI.SAIJO HASSAN
SRI.A.S.SABU
SRI.A.G.GIRISH KUMAR
SRI.VIMAL KUMAR.A.V.

RESPONDENTS:
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1. INSTITUTE OF HUMAN RESOURCES
DEVELOPMENT, PRAJOE TOWERS, VAZHUTHACAUD,
THIRUVANANTHAPURAM, REPRESENTED BY ITS DIRECTOR.

2. THE DIRECTOR, INSTITUTE OF HIMAN
RESOURCES DEVELOPMENT, PRAJOE TOWERS,
VAZHUTHACAUD, THIRUVANANTHAPURAM.

3. MANOJ KUMAR P., TECHNICIAN GRADE I,
MODEL POLY TECHNIC, VADAKARA.

4. PREKAS K.N., TECHNICIAN GRADE I,
COLLEGE OF APPLIED SCIENCE, MALAPPURAM.

5. SREENIVAS K.K., TECHNICIAN GRADE I,
COLLEGE OF APPLIED SCIENCE, PATTUVAM, KASARAGODE.

6. SURESH BABU K., TECHNICIAN GRADE I,
MODEL POLY TECHNIC, KALLIASERY, KANNUR.
7. SATHEESAN K.K., TECHNICIAN GRADE I,
COLLEGE OF APPLIED SCIENCE, CALICUT.

8. BINUMON P.D.,
TECHNICIAN GRADE I,
COLLEGE OF ENGINEERING,
POONJAR.

9. SHERLY J.R., TECHNICIAN GRADE-I,
COLLEGE OF ENGINEERING, KARUNAGAPPALLY.

10. SOBHAKUMARI G.S., TECHNICIAN GR.I,
COLLEGE OF ENGINEERING, CHENGANNUR.

11. JAYARANI JOSEPH,
TECHNICIAN GRADE-I,
COLLEGE OF ENGINEERING,
CHENGANNUR.

12. JAINY JOHN,
TECHNICIAN GRADE-I,
COLLEGE OF APPLIED SCIENCE,
PUTHUPPALLY, KOTTAYAM.

13. MANOJ G., TECHNICIAN GRADE-I,
COLLEGE OF ENGINEERING, ADOOR.

14. *SATHEESAN K.,
TECHNICIAN GRADE-I,
MODEL POLY TECHNIC,
THEEKOY, KOTTAYAM (DELETED)

NAME OF THE 14TH RESPONDENT IS DELETED
AS PER ORDER DATED 07/07/2004 IN IA NO. 7928/2004.

15. SHEEBA N. JOSE, TECHNICIAN GRADE-I,
COLLEGE OF APPLIED SCIENCE,
ADOOR.

16. SUJITH KUMAR T.P.,
TECHNICIAN GRADE-I,
COLLEGE OF APPLIED SCIENCE,
MAVELIKKARA.

17. KRISHNAPRASAD,
TECHNICIAN GRADE-I,
COLLEGE OF ENGINEERING, ADOOR.

BY ADV. SRI.C.R.SIVAKUMAR --- R7
ADV. SRI.N.N.SUGUNAPALAN, SC, IHRDE R1 AND R2

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 4673/2004 F

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE ORDER NO. E4. 2907/98/HRD DT. 1/12/00 BY THE R1.

EXT.P2. COPY OF THE ORDER NO. E4. 1802/2000/HRD DT. 1/12/00 BY THE R1.

EXT.P3. COPY OF THE JUDGMENT DT. 7/12/00 IN OP NO. 34280/00 OF THIS COURT.

EXT.P4. COPY OF THE JUDGMENT DT. 1/6/01 IN WA NO. 136/01 OF THIS COURT.

EXT.P5. COPY OF THE ORDER DT. 3/07/01 BY THE R1.

EXT.P6. COPY OF THE ORDER DT. 6/09/02 BY THE R2.

EXT.P7. COPY OF THE REPRESENTATION DT. 10/10/02 BY THE PETITIONERS BEFORE THE R2.

EXT.P8. COPY OF THE REPRESENTATION DT. 25/3/003 BY THE P1 BEFORE THE R2.

EXT.P9. COPY OF THE LETTER DT. 6/12/03 OF THE R2 REJECTING THE CLAIMS OF THE PETITIONERS.

EXT.P10. COPY OF THE ORDER BY THE R1 DT. 25/09/04.

EXT.P11. COPY OF THE ORDER BY THE R1 DT. 3/7/90.

EXT.P12. COPY OF THE ORDER ISSUED BY THE R1 DT. 28/4/2005.

WP(C) NO: 4673/2004 F

RESPONDENT'S EXHIBITS

EXT.R2A. COPY OF THE CIRCULAR DT. 28/4/98 BY THE R2.

EXT.R2B.. COPY OF THE MINUTES HELD ON 7/3/00 BY THE R2.

EXT.R2C. COPY OF THE MINUTES HELD ON 3/5/00 BY THE R2.

EXT.R2D. COPY OF THE LETTER DT. 6/10/98 BY THE R2.

EXT.R2E. COPY OF THE PROCEEDINGS OF THE R2 DT. 28/7/98.

EXT.R2F. COPY OF THE PROCEEDINGS OF THE R2 DT. 5/12/00.

EXT.R2G. COPY OF THE PROCEEDINGS OF THE R2 DT. 5/12/00.

EXT.R2H. COPY OF THE PROCEEDINGS OF THE R2 DT. 6/09/02.

EXT.R2(I). COPY OF THE REPRESENTATION SUBMITTED SRI. KRISHNA PRASAD S TO THE R2 DT. 5/1/2002.

True copy

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Thottathil B. Radhakrishnan, J.

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W.P.(C)No.4673 of 2004

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Dated this the 5th day of July, 2007.

JUDGMENT

Petitioners were promoted to a higher category in the service of Institute of Human Resources Development. They did not then want to join in the different stations to which they would stand transferred on account of such promotion. They moved this Court and obtained Ext.P3 judgment whereby it was ordered that the promotions of the petitioners shall be kept in abeyance for two weeks and that any relinquishment letter submitted by them would be considered. IHRD filed an appeal. That was disposed of as per Ext.P4 judgment holding that it is only just and proper that the Director considers the claim of the petitioners. It was further directed that status quo as on that day have to be maintained until a decision is so taken. This means that the order of promotion was placed

under suspended animation in view of Ext.P3 judgment ordering that it shall be kept in abeyance and that the said status would continue till the Director decides on the request of the petitioners to relinquish the promotion. The request for relinquishment was rejected. This means the order of promotion would have its full run, in accordance with the relevant laws.

2. The question that now arises is as to the determination of seniority between the petitioners and the private respondents. By G.O.(MS) No.159/89/H.Edn. dated 10-8-1989, the Government approved the Service Rules of the IHRD. Those Rules provide that promotions are not automatic and would depend upon the consideration of performance of all the internal candidates by the Committee. Rule 2(14) of those Rules provide as follows:

> "The seniority of employees of the Institute in each category will be determined by the order of merit in which they were selected for appointment to the grade. Those selected on an earlier occasion shall be ranked senior to those selected later".

3. This means that the seniority of employees in a category will be determined on the basis of their performance in the selection for appointment to that grade and the seniority in such higher category would thus depend on their ranking by the selection body. Therefore, the seniority in the grade to which the petitioners were promoted did not depend upon any other consideration, including the date of joining. As already noticed, the promotion orders were kept in abeyance by the judgments of this Court. Therefore, in so far as the dates of occurrence of vacancies are

concerned, the relevant date of occurrence of vacancy will obviously be a date before which the promotion orders, impugned in Ext.P3 writ petition, were issued. The date of occurrence of vacancy cannot be pushed to a later point of time depending on Exts.P3 and P4 judgments. It was not as if the petitioners were not entitled to enjoy the benefits of promotion if the IHRD were to insist that the petitioners shall not be permitted to relinquish the promotions. It would be wholly unreasonable and arbitrary to refuse to relinquish a promotion and yet to say that the promotion will take effect only at a later point of time.

4. For the foregoing reasons, the petitioners are entitled to the reliefs sought for in this writ petition.

In the result, the impugned Exts.P6 and P9 are

quashed and it is directed that the seniority of the petitioners in the rank of Technician Gr-I shall be re-fixing ranking them in terms of Ext.P1 ranking. Having regard to the interim order in force, there will be a further direction that promotions, if any effected after the impugned orders will be reviewed and orders issued within a period of two months from the date of receipt of a copy of this judgment.

Writ petition is allowed as above. No costs.

Thottathil B.Radhakrishnan,
Judge.

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Thottathil B. Radhakrishnan, J.

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W.P.(C)No.4673 of 2004

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JUDGMENT

Dated:5-7-2007